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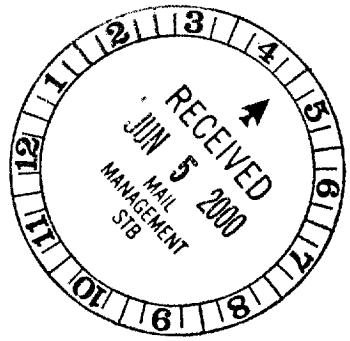
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582
(Sub-No. 1)

MAJOR RAIL CONSOLIDATION
PROCEDURES



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AMTRAK'S REPLY COMMENTS IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING

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Date: June 5, 2000

In accord with the procedures set forth in the Advance Notice of Proposed Rulemaking served by the Board on March 31, 2000, the National Railroad Passenger Corporation ("Amtrak") submits the following reply comments on modifications to the Board's regulations at 49 C.F.R. part 1180, subpart A, governing proposals for major rail consolidations.

I. COMPENSATION FOR MERGER-RELATED SERVICE PROBLEMS

A number of parties have proposed that the Board require the applicants in future rail mergers to pay damages to, or reimburse additional costs incurred by, parties who are harmed by service problems associated with merger implementation. However, while some of these commentors have specified that their proposed remedies should apply to Amtrak,[1] others have not addressed this issue.

Should the Board adopt any of these proposals, it should extend to Amtrak the same economic remedies that are provided to users of rail freight services.[2] As noted in Amtrak's opening comments, the Rail Passenger Service Act requires railroads to give Amtrak's trains preference over freight trains. 49 U.S.C. 24308(c). A regulatory scheme that required railroads to compensate freight shippers for merger-related service problems, but did not provide similar relief to Amtrak, would encourage railroads to favor freight shippers over Amtrak

[1] See, e.g., Initial Comments of the United States Department of Transportation, at 3.

[2] There is no need for the Board to extend to Amtrak any remedies relating to access to alternative rail lines and facilities. Amtrak already has such remedies under 49 U.S.C. 24308(b), which requires the Board to issue emergency service orders to facilitate operations by Amtrak. Moreover, in most cases, the rerouting of passenger trains is not a practical solution to rail line congestion problems because it would require the suspension of service to intermediate points along the trains' normal routes.

passenger trains in service recovery efforts. This would clearly contravene statutory policy.

II. MODIFICATION OF STANDARD PROTECTIVE ORDER TO GIVE IN-HOUSE COUNSEL ACCESS TO "HIGHLY CONFIDENTIAL" DOCUMENTS

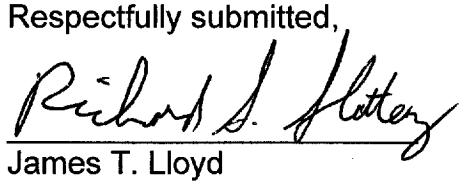
The standard protective orders issued in rail merger proceedings distinguish between outside attorneys and consultants (who are given access to "highly confidential" materials) and in-house attorneys (who are not). Norfolk Southern's initial comments urged the Board to modify this practice to allow, except in unusual cases, in-house attorneys to also have access to documents and information designated as "highly confidential".

Amtrak endorses NS's proposal. Parties to administrative proceedings have the right to select the attorney who will represent them. Many participants in Board merger proceedings choose, for any number of reasons (cost, special expertise, etc.), to be represented exclusively by in-house counsel. The current practice places parties such as Amtrak, who rely heavily or entirely on in-house counsel in merger proceedings, at a clear disadvantage when compared to applicants who are represented by outside law firms.

Moreover, any justification that may once have existed for imposing more stringent access limitations on in-house attorneys than on outside consultants has long since evaporated. Today, railroads, like other industries, make extensive use of outside consultants to develop their business and competitive strategies. In many cases, the consultants who render such services are the same firms and individuals who provide consulting services to parties in merger

proceedings. Allowing such consultants to have access to highly confidential documents, while denying access to in-house attorneys whose job responsibilities are limited to legal matters (and who are bound by professional responsibility rules that are likely to make them more cognizant of the need to avoid misuse of confidential information), clearly makes no sense.

Respectfully submitted,



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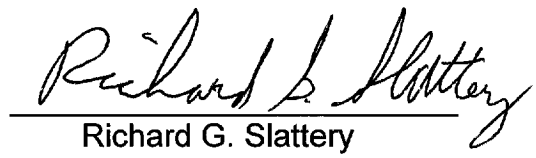
Dated: June 5, 2000

CERTIFICATE OF SERVICE

I certify that I have, this 5th day of June 2000, served copies of the foregoing Amtrak's Reply Comments in Response to Advance Notice of Proposed Rulemaking by first class mail, postage prepaid, upon all parties of record in this proceeding.



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